SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1097 144

LAWRENCE BAKING COMPANY, A MICHIGAN CORPORATION,

Petitioner,

vs.

MICHIGAN UNEMPLOYMENT COMPENSATION COMMISSION.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

ALVA M. CUMMINS,
Counsel for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

On July 1st, 1941, petitioner was the operator of a wholesale bakery in Lansing, Michigan, and at that time employed ninety-eight persons. On that date sixteen employees went on strike and picketed the plant. The operations of the employer were interrupted only to the extent of delaying the baking of the bread for about fifteen minutes and some delay in the cake department. The work continued uninter-

ruptedly thereafter. The strike continued until September 16, 1941, during which time both picketing and negotiations continued. The striking employees filed claim for unemployment benefits for the period beginning July 8. The Supreme Court of Michigan on February 24, 1944, sustained the right to compensation. Motion for rehearing was denied April 7, 1944. Judgment was entered accordingly.

The Michigan Unemployment Compensation Act provides for taxation of employers to create a fund for the payment of benefits to the unemployed. This fund must be reimbursed from time to time by additional contributions based in amount on each particular employer's experience record in the matter of unemployment. The employer pays in accordance with the extent of unemployment experienced in his business. In this it differs from the New York type of statute which taxes all employers at a flat and equal rate, which statute was considered by this Court in *Chamberlain* v. *Andrews*, 299 U. S. 515.

By the original Act benefits were carefully limited to cases of involuntary unemployment and the Supreme Court held that no part of the fund could be used in the financing of a strike. *Chrysler Corporation* v. *Smith*, 297 Mich. 438. But, without in any way (except by implication) changing these provisions, by Act No. 364 P. A., 1941,* an obscure amendment was adopted which the Supreme Court of Michigan held to mean as follows: (We quote from the opinion.)

> "Under the amendment as construed employees (strikers) are disqualified if the labor dispute results in a stoppage of the employer's work and they are not disqualified if the labor dispute does not result in such stoppage."

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* Appendix.

The Questions Involved.

This case raises the question whether the statute referred to takes property without due process of law and whether it denies equal protection of the law.

The questions here posed are two:

1. Is it within the legislative power to provide for payment of unemployment compensation to strikers, from funds raised by taxation based on experience records, without regard to the rightfulness or wrongfulness of the strike?

2. If such power exists, is there in this law an arbitrary discrimination as between employers and as between employees based on whether the strike stopped or did not stop work in the employer's plant?

ARGUMENT.

As to Question Number 1.

At the outset, we submit that, obviously, if the legislative power constitutionally extends to the payment from funds so raised of benefits to strikers who do not succeed in bringing about a stoppage of work in the plant, it follows as a necessary corollary that the legislature can, if it so wills, award compensation to strikers who do so succeed. We think there can be no possible basis for saying that the legislative power is sufficient to authorize unemployment compensation to strikers if work goes on but that the legislature has no power to give compensation to strikers if the work stops. It is unthinkable that the one can be done but that the other can't be done.

But we submit that it is also unthinkable that employers generally—all employers—can be taxed to create funds to pay strikers generally—all strikers—benefits for unemployment while on strike, with, of course, the power to increase

the amount of such benefits to the full wage of the employee.

There is no place to draw the line and say the one is constitutional and the other is not.

That power if fully exercised would be ruinous. The only alternative would be to yield to whatever demands might be made. Even under the statute here in question the coercive power is very great to compel employers to yield to all demands or close down.

We submit there is only one place to draw the line as to unemployment compensation, *and that is between voluntary and involuntary* unemployment. That is the point where the line was drawn at the start in this state and we think in every state in the country, and where the line was drawn when this Court sustained the principle of unemployment compensation. No one would have thought at that time of suggesting that strikers could or should be paid benefits while on strike. By this we are not contending that a law would be invalid which provided for payment to strikers who are in some legal way found to have had cause for striking. Such a strike might with reason be deemed involuntary.

The majority of the Supreme Court of Michigan in deciding this case said:

> "Plaintiff's argument is based upon the assumption that the claimants were wrongfully on strike; were not justified in striking; that the strike was their own fault;"

But the argument involves no such assumption. Every one knows that strikes are sometimes justified and sometimes without valid cause. There can be no assumption that a strike is rightful or wrongful. *Our contention is that unless a law makes provision for determining the rightfulness or wrongfulness of a strike and awards compensation to strikers only after the strike has been determined to be*

rightful, that law is unconstitutional. To take money by taxation to be paid to strikers regardless of whether the employer is in the right or in the wrong, and which the employer must replace, is to take property without due process of law and in denial of the equal protection of the law. There is no inkling of a public purpose in such a tax. The legislative power to tax is broad indeed, but yet it must be possible to suppose with reason a public benefit to arise from it, or else it is invalid.

Such a law places the employer wholly at the mercy of his employees; it literally takes his money to finance a strike against himself.

The idea is fantastic, but a majority of the Michigan Supreme Court said, in substance, that the legislature must have meant that because by the amendment it must have meant *something* and no other possible meaning could be imagined.

And having found that that was what the legislature meant it was also said that it violates no provision of the State or National Constitution. We venture to think that this conclusion was dogmatic rather than reasoned, but, at any rate, it was so held.

Question No. 2.

Petitioner submits that imposing added taxation on some employers and exempting others and providing compensation for some employees and denying it to others in the same situation except as to the single matter of stoppage of work is an arbitrary discrimination. What does the question of stoppage of work in the establishment have to do with the question as to whether, and to what extent, strikers should be paid benefits or employers taxed?

Stoppage of work is a matter over which strikers ordinarily have no control. No doubt the striking group in-

volved in this case hoped to stop the operation of the plant. If they had succeeded they would have gone without pay, but since they didn't succeed, they are to be paid. Whether work shall stop or not might depend on many things; among them the strength or weakness of the strike, the mental attitude of the employer, the availability of new employees, etc. But one thing is clear: *A small and unimportant group might strike at will and go fishing and be sure of pay meanwhile, because, being small and unimportant, they could be sure that there would be no stoppage of work.*

Of course, we recognize as sound law the holding of this Court in *Carmichael* v. *Southern Coal and Coke Company*, 301 U. S. 495 (57 Supreme Court 868, Sup. Ct., 81 Law Ed. 1245) where the Court said:

> "A legislature is not bound to tax each member of a class or none. It may make distinctions of degree having a rational basis and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it."

We think this also would be good law if the word "benefit" were substituted for the word "tax." *But there must be "a rational basis."* And what rational basis is there for saying a given employer shall be taxed more or less depending upon whether a strike stops or does not stop the operation of his plant?

Likewise, is there any sense in saying that benefits shall depend upon the same thing?

The Michigan Court stresses the point that all *similarly* situated are treated alike. But is that true? Are not all striking employees and all employers similarly situated in all *material* respects? Are irrelevant dissimilarities to be made the basis of discrimination? It seems to us that it

would be no more unreasonable to say that all left-handed strikers should be paid but right-handed ones should be disqualified. The law starts out with all employers constituting a class to be taxed and all employees a class to be benefited (except where exempt because of the small number of employees). Then by this amendment, as construed, both employers and employees are divided into two classes to be taxed or not and to be benefited or not, depending upon circumstances which have no bearing on the question whatever.

Throughout this case we have challenged counsel and urged upon the Courts that, if there is any reasonable basis for these distinctions it must be possible to formulate and state the reason. Except as to matters that are axiomatic, we can't conceive of a reasonable conclusion that can't be supported in some degree by argument. In *Carmichael* v. *Southern Coal and Coke Company*, supra, this Court had no difficulty in pointing out adequate reasons for the discrimination there involved. But it is a far cry from that to saying "If nobody can think of and express a possible reason yet we will still presume that reasons exist." Reasonable basis like reasonable doubt calls for the application of common sense.

This Court has said with reference to a failure to show the reason upon which a discrimination rests:

> "The appellees do not intimate that the classification bears any relation to the public health or welfare; that the provision will discourage monopoly; or that it was aimed at any abuse, cognizable by law, in the milk business. In the absence of any such showing we have no right to conjure up possible situations which might justify the discrimination. The classification is arbitrary and unreasonable and denies the appellant the equal protection of the law."
>
> *Mayflower Farms* v. *TenEyck*, 297 U. S. 266, 80 Law Ed. 675.

The word "conjure" was used, we have no doubt, advisedly, but, we submit, the only way to find a reason to support the rule in the case at bar is to "conjure it up."

The test laid down in the minority opinion in the same case was as follows:

> "A statutory discrimination will not be set aside as the denial of equal protection of the law if any state of facts reasonably may be conceived to justify it."

Applying this test, we inquire, what state of facts *reasonably* can be conceived to justify this discrimination? *Conceiving* a reasonable state of facts is wholly a different thing from *presuming* such a state of facts in spite of inability to conceive it. Yet the Court below has contented itself with the statement (which seems to us to be merely dogmatic assertion) "under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work and they are not disqualified if the labor dispute does not result in such stoppage. This is a reasonable means of determining qualification for benefits and does not result in arbitrary or unjust discrimination between employers."

True, in passing on this point the Court quoted from *In re Steelman,* 219 N. C., 306 (13 S. E. (2nd) 544.) But in that case the Court was considering, as was expressly stated in the opinion, a question of statutory construction only. How that decision has any bearing on this question we are unable to see. Ironically enough as to its applicability to the instant case, that court thought it worthwhile to comment on the fact that the state, by its statute, sought "to be neutral in the labor dispute as far as practicable and to grant benefits only in conformity to such neutrality." A striking contrast indeed to the Michigan statute as construed! In the *Chrysler* case, supra, the duty of neutrality was emphasized, but the very opposite of neutrality is em-

bodied in this statute (as construed). The only possible neutral position would be to say "There can be no compensation for strikers without providing a method of determining which side is at fault."

Of course, the language of Mr. Justice Holmes quoted in the *Steelman* case states a principle to be applied *in reaching a conclusion* but it is no support for a conclusion either way. We submit this case meets the test there laid down and is "very wide of the mark."

Importance of Case.

Due to the fact that public questions were involved no costs were allowed by the Michigan Supreme Court.

The provisions here involved are found in the statutes of a number of states and except in Oklahoma, are being administratively enforced in accordance with the interpretation made by the Michigan Court. The Oklahoma Supreme Court, held that "stoppage of work" referred to the work of the employee and not that of the plant. *Board of Review* v. *Mid-Continent Petroleum Corp.*, 141 Pac. 69. The matter then is one of countrywide importance. We find no court decision other than Michigan as to the questions here raised.

In some states, however, the tax is on a flat rate instead of one based on individual experience. In such cases, of course, the payment of benefits does not directly result in an *additional* tax on the employer.

Petitioner respectfully requests that a writ of certiorari be granted out of and under the Seal of this Honorable Court directed to the Supreme Court of the State of Michigan commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the judgment of the Supreme

Court of the State of Michigan be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet.

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APPENDIX.

Here is printed the material portion of Section 29 of Act No. 1 of the Public Acts of Extra Session of 1936, as amended by Act No. 364 of the Public Acts of 1941.

Sec. 29. Same; disqualification for benefits. An individual shall be disqualified for benefits * * *

(c) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: *Provided, however,* That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individuals shall be deemed to be directly involved in a labor dispute, unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with one or more other employees have voluntarily stopped working other than at the direction of his employer, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work; *Provided, however,* That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed he shall have voluntarily stopped working, other than at the direction of his employer, in sympathy with employees in some other establishment or department in which labor dispute was then in progress.

(25)

United States of America

In the Supreme Court of the United States

October Term 1944

No. 144

Lawrence Baking Company,
Petitioner,

v.

Michigan Unemployment Compensation Commission.

Brief Opposing Petition for Writ of Certiorari to Supreme Court of the State of Michigan

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Lawrence Baking Company,
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Brief Opposing Petition for Certiorari. [1]

I

'Statement of Jurisdiction'.

Since the petition for certiorari fails to comply with the rule requiring a statement of jurisdiction, we respectfully submit that the application may be denied on that ground (Supreme Court Rule 12).

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[1] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the transcript of record.

II

Counter Summary Statement of Matter Involved.

With the exceptions presently noted, petitioner's 'Summary Statement of Matter Involved' is acceptable to us.

1. The petition draws in question the constitutional validity of § 29 (c) of the Michigan 'Unemployment Compensation Act', **[2]** on the ground that, as applied to the Lawrence Baking Company, (1) property may be taken through taxation without due process of law, and (2) the act as it now stands arbitrarily discriminates between certain classes of employers, and between certain classes of employees.

2. Petitioner's counsel (p. 2) correctly observes that 'by the original act (as amended by Act No. 324, Pub. Acts 1939), benefits were carefully limited to cases of involuntary unemployment and the Supreme Court (of the State of Michigan) held (in an earlier case) that no part of the fund (created by the act) could be used in the financing of a strike. *Chrysler Corporation v. Smith*, 297 Mich. 438', but we cannot agree with his statement that a subsequent amendment (Act No. 364, Pub. Acts 1941) was merely 'by implication', or that it was otherwise 'obscure'.

As stated by the court below (46), 'prior to the 1941 amendment, said section 29 (c) of the 1936 act, as then last amended by Act No. 324, Pub. Acts 1939, and designated therein as section 29 (d), provided in part:

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[2] Act No. 1, § 29 (c), Pub. Acts 1936, Extra Sess., as last amended by Act No. 364, Pub. Acts 1941.

> "An individual shall be disqualified for benefits . . . (d) For any week with respect to which his total or partial unemployment is due to a labor dispute which is actively in progress in the establishment in which he is or was last employed" '. **[3]**

The court also observes that the 1941 act amended § 29 to read in part as follows:

> "An individual shall be disqualified for benefits . . . . (c) For any week with respect to which his total or partial unemployment is due to a *stoppage of work existing because of a* labor dispute in the establishin which he is or was last employed".

Thus it is clearly, rather than obscurely, seen that the 1941 amendment of section 29 (c) consisted solely of the addition of the italicized words '*stoppage of work existing because of*', and the renumbering of the paragraph as subsection (c) rather than subsection (d).

> "To summarize (said the court, p. 47), section 29 (c) of the 1936 act disqualified an employee for benefits if his unemployment was '*due to a labor dispute* . . . . actively in progress *in the establishment*'. The 1941 amendment of said section disqualifies an employee for benefits if his unemployment is '*due to a stoppage of work* existing because of a labor dispute *in the establishment*' ".

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[3] It was this plain and unequivocal language which was interpreted by the Supreme Court of Michigan in the case cited by petitioner's sounsel **(Chrysler Corporation v. Smith**, 297 Mich. 438), to mean that no part of the fund established by the act could be used to finance a strike.

And counsel is correct in stating that the court below held the section, as thus amended, to mean as follows (52):

> "Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage".

Or, as otherwise phrased by the court:

> "We are convinced that by the 1941 amendment of section 29 (c) the legislature intended to disqualify an employee for benefits, only when his unemployment resulted from a stoppage or substantial curtailment of the work and operations of the employer establishment because of a labor dispute. The phrase 'stoppage of work' refers to the work and operations of the employer establishment and not to the work of the individual employee" (50-51).

III

The Questions Involved.

We take the liberty of reframing the questions posed by petitioner:

> **First:** Is there substance to the claim that petitioner, an employer, is deprived of its property without due process of law by an act of the State legislature (the 'Michigan Unemployment Compensation Act,') which provides for payment of unemployment

benefits out of a fund created by taxation on the basis of the employer's 'experience record' (§ 19), and which disqualifies an employee from receiving benefits 'for any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed' (§ 29-c)?

Petitioner contends that such an enactment is not within legislative power, since (counsel says) payment of unemployment compensation to strikers from funds raised by taxation based on experience records, is authorized 'without regard to the rightfulness or wrongfulness of the strike'.

Respondent submits there is no substance to such a contention, since petitioner has, in the first place, failed to establish the fact that its experience record has been affected by such payments or that it has been injured in any manner by the judgment of the court below; and, second, the Supreme Court was correct in holding the section in question here does not violate the due process clause of the 14th Amendment.

Second: Is there substance to the contention that § 29 (c) of the act, by 'imposing taxation on some employers and exempting others, and providing compensation for some employees and denying it to others in the same situation except as to the single matter of stoppage of work, is an arbitrary discrimination', and that hence this section violates the equal protection clause of the Federal Constitution?

Petitioner says 'Yes'.

Respondent says there is no merit in the contention, and the court below ruled correctly in sustaining the act as constitutional.

IV

Argument.

Point One

There is no substance in the claim that § 29 (c) of the Michigan Unemployment Compensation Act operates to deprive the petitioner-employer of its property without due process of law.

Petitioner argues thus:

> "Our contention is that unless a law makes provision for determining the rightfulness or wrongfulness of a strike and awards compensation to strikers only after the strike has been determined to be rightful, that act is unconstitutional. To take money by taxation to be paid to strikers regardless of whether the employer is in the right or in the wrong, and which the employer must replace, is to take property without due process. . . . There is no inkling of a public purpose in such a tax. The legislative power to tax is broad indeed, but yet it must be possible to suppose with reason a public benefit to arise from it, or else it is invalid" (4-5, petitioner's brief).

There are several valid answers to this contention, which render petitioner's position untenable:

First: Petitioner has failed to prove that it has or will be deprived of its property in this particular instance.

Although benefits are paid out of a pooled fund created and maintained by taxation of employers (§ 19), the tax rate of any employer *may* be but not necessarily is affected by the payment of benefits to his employees or former workers in any particular case. The commission maintains a separate experience record for each employer, which includes the total wages paid by the employer and total benefits charged against the employer's record (§ 17). An experience index is the quotient obtained by dividing the said benefits by the said payroll (§ 18). Based upon this experience index, an employer's tax rate may vary between 1% and 4% of his payroll (§ 19).

We find in the transcript of record no evidence that the payment of the unemployment claims in question here have or will result in an appreciable increase in the taxes to be paid by the petitioner, and hence, we think, the constitutional question raised is purely academic.

Second: Our position is that the tax imposed to create and maintain a fund out of which unemployment compensation benefits are paid, is for a public purpose expressly declared in an enactment lying with range of legislative police powers, and the policy involved is one with which the courts have never interfered.

The unemployment compensation law of this State was not designed to regulate labor relations nor to arbi-

trate disputes between employer and employee; but its manifest purpose was to relieve economic distress in communities affected by unemployment of persons regularly employed.

The method provided to accomplish this purpose is the payment of unemployment benefits quite regardless of the conditions which the statute seeks to remedy.

The legislature in its wisdom, however, limited the payment of benefits to those individuals who can meet certain prescribed 'eligibility requirements' (§ 28), i.e., those who are able and available for work, who are registered therefor, and who have earned a definite amount of wages over a given period of time.

In weighing advantages to the economic condition of the people as a whole, resulting from payment of unemployment compensation benefits, the legislature also took into consideration social disadvantages which might result unless, under certain circumstances, benefits were denied. Such disqualification acts and the penalties prescribed therefor are enumerated in section 29 of the act.

For example, subdivision (a) thereof provides that one who voluntarily leaves his work without good cause attributable to his employer, shall be disqualified for the week in which such act occurred and for the three to five weeks immediately following. After the disqualification period has expired, the individual may receive unemployment benefits, provided he complies with the eligibility requirements of § 28, and that no other act of disqualification has been committed.

Subdivision (c) of section 29 (that in question here) provides for disqualification 'for any week with respect to which his (the employee's) total or partial unemployment is due to a stoppage of work because of a labor dispute in the establishment in which he is or was last employed'.

This legislative policy does not rest on the theory that employers are guilty of wrongdoing and must pay for the consequences of their acts; the tax is, therefore, not paid as a penalty.

Or, as the court below so ably expressed it (54):

> "Plaintiff's argument is based upon the premise that the payment of compensation to employees on strike is a penalty upon the employer, because its rate of contribution to the unemployment fund will thereby be increased. *The public purpose of the unemployment compensation law is to alleviate the distress of unemployment, and the payment of benefits is not conditioned upon the merits of the labor dispute causing unemployment.* (Emphasis supplied). Likewise, the required contribution of the employer to the unemployment compensation fund is not determined upon the basis of the merts of the dispute. The increase in the amount of the employer's contribution to the fund because of its experience record of payments to employees is not in any sense a penalty. By the unemployment compensation act, the legislature provided a method of determining the employer's contribution to the compensation fund, and it did not see fit to base the amount of such contribution upon the merits of a labor dispute or

upon the right or wrongdoing of the employer in connection with such dispute''.

We, therefore, respectfully submit that there is absolutely no merit to petitioner's contention that its property is taken without due process of law.

Point Two

Nor does the statute in question deny 'equal protection of the laws'.

The court below was satisfied that 'the 1941 amendment of section 29 (c)' as construed by it, 'does not result in an arbitrary or unjust classification of, or in discrimination between, employers involved in a labor dispute' (53), and we respectfully submit there is no substance in the contrary claim advanced by petitioner.

> ''Under such contention (said the court, 52) plaintiff argues that the circuit court's construction results in arbitrary discrimination between employers by classifying them on the basis of (1) those who elect to stop work and close down and (2) those who do not elect to stop work or close down during a strike. The amendment, as construed, does not so classify employers. All employers who are similarly affected 'because of a labor dispute' are treated alike. Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage. This is a reasonable means of determining qualification for benefits and does not

result in arbitrary or unjust discrimination between employers".

The court again approved the following statement by the appeal board, made in the earlier case of *Chrysler Corporation v. Smith*, 297 Mich. 438:

> " 'All interested parties who are involved in a claim for unemployment compensation . . . . must be dealt with on an impartial basis. The unemployment compensation fund should never be used to finance claimants who are directly involved in a labor dispute, nor should it ever be denied to claimants who are legally entitled to receive benefits. . . . None of the money accumulated in this fund should ever be disbursed for the purpose of financing a labor dispute nor should it be illegally withheld for the purpose of enabling an employer to break a strike. *The State of Michigan in so far as this act is concerned, must remain neutral in all industrial controversies*".

The policy of neutrality in such disputes is the motive of the amendment to § 29 (c), and its enforcement cannot result in unfair, unreasonable, or unjust discrimination as between classes.

> "A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it".
>
> *Carmichael v. Southern Coal & Coke Co.*,
> 301 U. S. 495, 509.

A similar question of discrimination was involved in the case of *Steelman* (*In re Steelman*, 219 N. C. 306, 13 S. E. 2d 544) where the court say:

> "It thus appears that the State seeks to be neutral in the labor dispute as far as practicable, and to grant benefits only in conformity to such neutrality. Of course, it is recognized that in a matter of this kind, some allowance must be made in fixing the line or point of difference between granting and withholding benefits during the stoppage of work caused by a labor dispute. *Supply Co. v. Maxwell*, 212 N. C. 624 (194 S. E. 117). 'But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark'. —Mr. Justice Holmes in *Louisville Gas & Electric Co. v. Coleman*, 277 U. S. 32 . . . . The wisdom or impolicy of such decision belongs to the legislative and not to the judicial department of the government. *United States v. F. W. Darby Lumber Co.*, 312 U. S. 100 . . . ."

We, therefore, in the light of such established principles, respectfully submit that the legislation here challenged does not offend the equal protection clause of the Federal Constitution, and that petitioner's contention is not worthy of serious consideration.

V

Relief Sought.

On the face of this record, we respectfully submit, petitioner is entitled to no relief, and the writ of certiorari should be denied.

Respectfully Submitted,

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Daniel J. O'Hara
Assistant Attorney General for the State of Michigan

Counsel for Respondent.

APPENDIX
'A'

APPENDIX

A

Schedule of applicable sections of the 'Michigan unemployment compensation act' (Act No. 1, Secs. 2, 19, 20, 28, 29, Public Acts 1936 (Ex. Sess.), as amended at time of controversy).

Sec. 2:

(This section has not been amended. It appears in Stat. Ann. 1942 Cum. Supp. as § 17.502).

"Sec. 2.

"Declaration of policy. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment

reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state."

Sec. 19, as amended by Act No. 364, Pub. Acts 1941:

(This section has not been further amended. It appears in Stat. Ann. 1942 Cum. Supp. as § 17.520.)

"**Sec. 19.**

"Same; adjustment of rates. The commission shall determine the contribution rate of each employer for the calendar year commencing January 1, 1942, and annually thereafter in accordance with the following requirements:

"Each employer's contribution rate shall be three (3) per centum of the wages paid by him with respect to employment unless and until contributions have been payable by the employer throughout a period of at least forty-two (42) consecutive calendar months immediately preceding the end of the last completed calendar year, and there has been a period of not less than thirty-six (36) consecutive calendar months immediately preceding the end of the last completed calendar year throughout which an individual if unemployed and eligible, could have received benefits based on wages from such employer.

"Except as provided in the preceding paragraph, each employer's contribution rate for any calendar

year shall be determined on the basis of his experience index at the beginning of such calendar year.

Each employer's contribution rate shall be determined from the following table:

If the employer's experience index is:	The employer's contribution rate shall be:
Less than 1.0%	1.0%
1.0% and less than 1.3%	1.3%
1.3% and less than 1.6%	1.6%
1.6% and less than 1.9%	1.9%
1.9% and less than 2.2%	2.2%
2.2% and less than 2.5%	2.5%
2.5% and less than 2.8%	2.8%
2.8% and less than 3.1%	3.1%
3.1% and less than 3.4%	3.4%
3.4% and less than 3.7%	3.7%
3.7% and less than 4.0%	4.0%
4.0% or greater	4.0%

No employer's contribution rate shall exceed four (4.0) per cent."

Sec. 20, as amended by Act No. 364, Pub. Acts 1941:

(This section has not been further amended. It appears in Stat. Ann. 1942 Cum. Supp. as § 17.521.)

"**Sec. 20.**

"Same; charging of benefits.

"(a) Benefits paid in any calendar year shall be charged against the employers' experience records

as of the year in which such payments are made. The benefits paid to an individual with respect to unemployment occurring in any benefit year established after the effective date of this act shall be charged against the experience records of all the employers in whose employ the individual earned fifty dollars ($50.00) or more in wages during the base period which was used in determining his benefit rights for such benefit year: Provided, That the amount charged to each such employer shall bear the same relation to the total benefits paid such individual as the base period wages earned with the employer bear to the total amount of base period wages earned with all such employers, computed to the nearest multiple of one (1) per centum. If the commission finds that any benefits paid and charged against an employer's experience record were improperly paid, an amount equal to the charge based on such benefits shall be deducted from the charges against the employer's experience record for the current calendar year."

Sec. 28, as amended by Act No. 364, Pub. Acts 1941:

(This section was further amended by Act No. 18, Pub. Acts Second Extra Session 1942, and by Act No. 88, Pub. Acts of 1943. The 1941 amendment appears in Stat. Ann. 1942 Cum. Supp. as § 17.530.)

"Sec. 28.

"Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

"(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe.

"(b) He has made a claim for benefits in accordance with the provisions of section 32 of this act.

"(c) He is able to work, and is available for full-time work: Provided, That an individual who has been employed during his base period only as a regular part-time employee working not more than two (2) days per week, or who has been employed primarily as a regular part-time employee and had in his base period no more than ten (10) weeks of employment in which he worked more than two (2) days, shall be presumed to be unavailable for full-time work unless a determination of his availability for full-time work is made on the basis of substantial supporting evidence. The Commission shall by regulation prescribe such special reporting procedures as are necessary to identify the wage records of individuals so employed as regular part-time employees.

"(d) Within each benefit year, and prior to the first week with respect to which he claims benefits for total or partial unemployment in such benefit year, he must have served a waiting period of two weeks (not necessarily consecutive) in which he was totally unemployed or earned remuneration equal to less than three-fourths (¾) of his weekly benefit amount, and in which he was eligible for benefits in all other respects under the provisions of this section: Provided, That this requirement shall not interrupt the

payment of benefits for consecutive weeks of total unemployment: Provided, further, That if a waiting period week of partial unemployment ends in a week with respect to which benefits for total unemployment would otherwise be payable, an eligible individual may receive a benefit equal to one-seventh (1/7) of his weekly benefit amount for each day of such week which is not included within the period covered by the claim.

"(e) He has earned wages equal to at least two hundred fifty dollars ($250.00) during his base period and has earned some wages in each of two different calendar quarters in such base period.

"(f) If the commission finds that a worker otherwise eligible for benefits would be rendered substantially more employable if he were required to undergo vocational retraining, such individual may be required to participate in a vocational retraining program maintained by the commission or by any public agency or agencies designated by the commission: Provided, That the maximum amount of benefits payable to individuals who do undergo such retraining may be extended at the discretion of the commission for the period of such retraining to not more than sixteen (16) times the weekly benefit amount. The termination of a benefit year shall not stop or interrupt the payment of such extended benefits, but nothing herein contained shall relieve such individual claiming benefits from the operation of any of the foregoing provisions in this section. Such extension of maximum benefits shall be granted only to individuals who are undergoing training in vocational training courses which have been approved by

local advisory councils on which employers and labor are represented. Any individual who is required by the commission to undergo such vocational retraining must accept suitable work as defined in section 29, if offered to him. The experience record of no employer shall be charged with benefits paid beyond the benefit payment period to which the claimant is otherwise entitled."

Sec. 29, as amended by Act No. 364, Pub. Acts 1941:

(This section was further amended by Act No. 18, Pub. Acts Second Extra Session 1942, and by Act No. 88, Pub. Acts of 1943. The 1941 amendment appears in Stat. Ann. 1942 Cum. Supp. as § 17.531.)

"Sec. 29.

"Same; disqualification for benefits. An individual shall be disqualified for benefits:

"(a) For the week (1) in which he has left his most recent work voluntarily without good cause attributable to the employer, or (2) in which he has been discharged for misconduct connected with his work or (3) in which a claimant leaves her work in order to move with her husband or family to another locality, if so found by the commission, and for not less than the three (3) nor more than the five (5) weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case and for each week of disqualification, not including the week in which such leaving or discharge occurred, an amount equal to the claimant's weekly

benefit amount shall be deducted from the total amount of benefits otherwise available to him in either the current or in the next succeeding benefit year: Provided, That if the employer has given notice that an individual has left work voluntarily without good cause or has been discharged for misconduct connected with his work, the payment of benefits to such individual shall be withheld until seven (7) days after the commission has notified the employer of the disposition of such claim: And provided, That if such determination has been appealed by the employer, the payment of benefits shall be withheld until seven (7) days after the employer has been notified of the findings of the referee.

"(b) If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him by any employing unit or by the commission or to return to his customary self-employment (if any) when so directed by the employment office or the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the three (3) nor more than the five (5) weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case and for each week of disqualification, not including the week in which such failure occurred, an amount equal to the claimant's weekly benefit amount shall be deducted from the total amount of benefits otherwise available to him in either the current or in the next succeeding benefit year. In determining whether or not any work is

suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

"Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

"(c)[*] for any week with respect to which his total or partial unemployment is due to a *stoppage of work existing because of a* labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the

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[*]

The 1941 amendment of section 29 (c) consisted solely of the addition of the italicized words and renumbering the paragraph as subsection (c) rather than subsection (d).

purpose of this section, no individuals shall be deemed to be directly involved in a labor dispute unless it is established:

"(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with one or more other employees have voluntarily stopped working other than at the direction of his employer, or

"(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

"(3) That at any time, there being no labor dispute in the establishment or department in which he was employed he shall have voluntarily stopped working, other than at the direction of his employer, in sympathy with employees in some other establishment or department in which labor dispute was then in progress.

"(d) Until any of said benefits awarded illegally shall have been paid back by him.

"(e) For any week with respect to which he is receiving or has received payments in the form of

"(1) Remuneration in lieu of notice;

"(2) Vacation with pay;

"(3) Compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States, or old age benefits under title 2 of the social security act, as amended, or similar payments under any act of congress: Provided, That if such payment is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such payments."